

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN ALFRED THOMAS,	:	
Petitioner,	:	
v.	:	Case No. 3:16-cv-38
RHONDA RICHARD, Warden,	:	JUDGE WALTER H. RICE
Madison Correctional Institution,	:	
Respondent.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #2) AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #6); OVERRULING PETITIONER'S OBJECTIONS THERETO (DOCS. #4, 7); DISMISSING WITH PREJUDICE 28 U.S.C. § 2254 PETITION FOR WRIT OF HABEAS CORPUS (DOC. #1); DENYING CERTIFICATE OF APPEALABILITY AND LEAVE TO APPEAL *IN FORMA PAUPERIS*; JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST PETITIONER; TERMINATION ENTRY

Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz, in his February 1, 2016, Report and Recommendations, Doc. #2, and his March 8, 2016, Supplemental Report and Recommendations, Doc. #6, as well as on a thorough, *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filings in their entirety.

Petitioner's Objections to the Report and Recommendations, Doc. #4, and to the Supplemental Report and Recommendations, Doc. #7, are OVERRULED. As

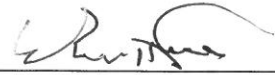
the Ohio Supreme Court pointed out, mandamus was not available under the circumstances presented here. Petitioner had an adequate remedy in the form of a direct appeal challenging the sufficiency of evidence against him, but failed to pursue it. *State ex rel. Thomas v. Franklin County Court of Common Pleas*, 141 Ohio St. 3d 547, 26 N.E.3d 810 (2015). Because he failed to present this issue to the state court in a timely fashion, he has no viable constitutional claim. Moreover, as Magistrate Judge Merz noted, regardless of the merits of any due process claim that Petitioner may have, the habeas petition was filed more than 29 years too late. *See* 28 U.S.C. § 2244(d)(1)(A). Accordingly, the Petition, Doc. #1, is DISMISSED WITH PREJUDICE.

Given that Petitioner has not made a substantial showing of the denial of a constitutional right and, further, that the Court's decision herein would not be debatable among reasonable jurists, and because any appeal from this Court's decision would be *objectively* frivolous, Petitioner is denied a certificate of appealability, and is denied leave to appeal *in forma pauperis*.

Judgment will be entered in favor of Respondent and against Petitioner.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

Date: March 18, 2016

A handwritten signature in black ink, appearing to read 'Walter H. Rice', is positioned above a horizontal line.

WALTER H. RICE
UNITED STATES DISTRICT JUDGE